

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 2008-0039

AGENCY DECISION DISMISSING COMPLAINT

**IN THE MATTER OF THE COMPLAINT FILED BY DOUGLAS BRUCE REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY COLORADO
SPRINGS, MEMORIAL HOSPITAL AKA MEMORIAL HEALTH SYSTEM AND
CITIZENS FOR EFFECTIVE GOVERNMENT.**

This matter is before the Administrative Law Judge (ALJ) upon the complaint of Douglas Bruce alleging that the City of Colorado Springs, through Memorial Hospital, made an illegal campaign contribution to Citizens for Effective Government. Hearing was scheduled for November 14, 2008 in Colorado Springs. Patricia K. Kelly, City Attorney, represented the defendant city and hospital. State Representative Douglas Bruce (Rep. Bruce) represented himself. Citizens for Effective Government (CFEG) was not represented by an attorney.¹

Background

CFEG is an issue committee registered as such with the Colorado Secretary of State. During the 2008 political campaign season, CFEG supported ballot issue 1A, a local ballot issue involving a proposed sales tax increase in El Paso County.

Memorial Hospital, also known as Memorial Health System, is an instrumentality of the City of Colorado Springs. On November 2, 2007, Memorial Hospital issued a check in the amount of \$4,000 to CFEG. On December 1, 2007, CFEG posted the contribution to its financial transaction ledger and deposited the money to its bank account. It subsequently reported the contribution in a report filed with the Secretary of State October 14, 2008.

The City of Colorado Springs is a home rule city that has adopted the provisions of the Fair Campaign Practices Act (FCPA), §§ 1-45-101 to 118, C.R.S. Rep. Bruce alleges that, by contributing \$4,000 to CFEG, Memorial Hospital and Colorado Springs violated § 1-45-117(1)(a)(I), C.R.S. of the FCPA, which prohibits government entities from making contributions or spending public money to urge voters to vote for or against any state-wide or local ballot issue. Rep. Bruce filed his complaint with the Secretary of State October 30, 2008.

¹ Stephanie Finley, CFEG Co-Lead, was present.

At the outset of the hearing, Colorado Springs and Memorial Hospital moved to dismiss the complaint for lack of timely filing. Rep. Bruce opposed the motion. For reasons explained below, the motion was granted.

Discussion

Standard applicable to this motion

Colo. Const. art. XXVIII, § 9(1)(f) directs that hearings of alleged fair campaign law violations be conducted according to the provisions of the Administrative Procedure Act, § 24-4-105, C.R.S. That section, in turn, adopts the district court civil rules of practice, to the extent practicable. Section 24-4-105(4). Rule 12(b)(1) of the Colorado Rules of Civil Procedure permits a defendant to raise by motion the court's lack of jurisdiction over the subject matter of the case. When lack of jurisdiction is raised, the plaintiff has the burden to prove jurisdiction. *Bazemore v. Colo. State Lottery Div.*, 64 P.3d 876, 878 (Colo. App. 2002); *Padilla v. School Dist. No. 1*, 25 P.3d 1176, 1180 (Colo. 2001).

Administrative tribunal's jurisdiction is limited

Administrative agencies are creatures of statute with no jurisdiction greater than that provided by the statutes that create them. *Dee Enterprises v. Indus. Claim Appeals Office*, 89 P.3d 430, 437 (Colo. App. 2003)(ALJ cannot exercise any jurisdiction not granted by statute), *citing Miller v. Denver Post, Inc.*, 137 Colo. 61, 322 P.2d 661 (1958), *Maryland Casualty Co. v. Indus. Comm.*, 116 Colo. 58, 178 P.2d 426 (1947), and *Pub. Utils. Comm'n v. Colo. Motorway, Inc.*, 165 Colo. 1, 437 P.2d 44 (1968). Acts that exceed the scope of an administrative agency's delegated powers are void. *Flavell v. Dept. of Welfare*, 144 Colo. 203, 355 P.2d 941, 943 (1960); *Adams v. Colorado Dept. of Social Services*, 824 P.2d 83, 86 (Colo. App. 1992); *O'Neill v. Dept. of Revenue*, 765 P.2d 590, 591 (Colo. App. 1988).

The ALJ has jurisdiction only over timely complaints

Colo. Const. art. XXVIII, § 9(2)(a) states that "Any person who believes that a violation of section 3, section 4, section 5, section 6, section 7, or section 9(1)(e), of this article, or of sections 1-45-108, 1-45-114, 1-45-115, or 1-45-117 C.R.S., or any successor sections, has occurred may file a written complaint with the secretary of state *no later than one hundred eighty days after the date of the alleged violation.*" *Italics* added. The alleged violation occurred on or about November 2, 2007 when Memorial Hospital issued a check to CFEG for \$4,000, but certainly no later than December 1, 2007 when CFEG listed the donation on its transaction ledger and deposited the money to its account. Rep. Bruce, however, did not file his complaint with the Secretary of State until approximately eleven months later on October 20, 2008. Because the complaint was not filed within 180 days of the alleged violation, it did not meet the timely filing requirement of § 9(2)(a), and the ALJ is without jurisdiction to hear the case.

Rep. Bruce argues that the complaint should not be dismissed because it was

not possible for him to discover the violation before CFEG reported the contribution in October 2008. In Bruce's opinion, dismissal would encourage violators to avoid the law simply by filing late reports, and would be unfair. Regardless of the equity of this argument, the ALJ must follow the law as written, which requires complaints to be filed within 180 days "after the date of the alleged violation." The law provides no exception for late discovery of the violation. Although Bruce believes this outcome to be unfair and inequitable, it was a valid policy choice for the electorate to make. The ALJ is not at liberty to second-guess this policy choice, particularly in light of the clear constitutional language. See *Ceja v. Lemire*, 154 P.3d 1064, 1067 (Colo. 2007) (although dismissal of plaintiff's complaint on grounds of governmental immunity may have been unfair, it was a valid policy choice for the legislature to make). When language of a constitutional amendment is clear and unambiguous, the amendment must be enforced as written. *Davidson v. Sandstrom*, 83 P.3d 648, 654 (Colo. 2004).

Summary

Because Colo. Const. art. XXVIII, § 9(2)(a) provides no jurisdiction to consider an untimely complaint, the complaint must be dismissed.

Agency Decision

The complaint against CFEG, Memorial Hospital and the City of Colorado Springs is dismissed. Because this ruling disposes of all issues raised by the complaint, the decision is subject to review by the Colorado Court of Appeals, pursuant to § 24-4-106(11), C.R.S. and Colo. Const. art. XXVIII, § 9(2)(a).

Done and Signed:

November 18, 2008

ROBERT N. SPENCER
Administrative Law Judge

Digitally recorded

Exhibits admitted

For the Complainant: exhibit A

For the Defendants: exhibits 1, 2, 3, 7 and 8

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above **AGENCY DECISION DISMISSING COMPLAINT** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Rep. Douglas Bruce
P.O. Box 26018
Colorado Springs, CO 80936

Patricia K. Kelly, City Attorney
Office of the City Attorney
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

Citizens for Effective Government
Attn: Stephanie Finley
P.O. Box 1723
Colorado Springs, CO 80901

and

William Hobbs
Secretary of State's Office
1700 Broadway, Suite 270
Denver, CO 80290

on this ____ day of November, 2008.

Court Clerk